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**Attorneys for Plaintiffs**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

PATRICIA HARRINGTON, EBONY  
PRICE, and CARLOTTA FRANKLIN  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

AIRBNB, INC.,

Defendant.

Case No. 3:17-CV-00558-YY

**FIRST AMENDED CLASS ACTION  
ALLEGATION COMPLAINT**

**JURY TRIAL DEMANDED**

1.

Plaintiff Patricia Harrington is an African-American woman and a resident of Clackamas County, Oregon. Plaintiff Ebony Price is an African-American woman and a resident of Multnomah County, Oregon. Plaintiff Carlotta Franklin is an African-American woman and a resident of Multnomah County, Oregon. Plaintiffs bring this action on behalf of themselves and as representative parties of the proposed class defined below.

2.

Defendant Airbnb, Inc. (“Airbnb”) is a Delaware corporation headquartered in San Francisco, California.

3.

Airbnb conducts regular, sustained business in Oregon and Multnomah County.

4.

As defined by ORS 659A.400, Airbnb is a “place of public accommodation” because Airbnb is a service offering to the public accommodations, advantages, facilities or privileges in, at least, the nature of services and lodgings.

5.

Airbnb operates an online platform accessible through its website, [www.airbnb.com](http://www.airbnb.com), which allows “hosts”—or members who wish to offer accommodations (such as a spare room, basement, or guest house)—to connect with and rent to prospective “guests,” or members who seek to book those accommodations on a short-term basis. Airbnb’s platform is also available through a mobile site and an application, which allow the public to access the service on mobile devices such as smart phones and tablets.

6.

Each Airbnb host offering an accommodation in Oregon is also a “place of public accommodation.”

7.

On information and belief, Airbnb offers over 2,000,000 listings for accommodations worldwide. By comparison, Marriott International, which operates and franchises hotels under nearly 20 different brands, reported operating under 800,000 rooms in 2015. In Portland alone, Airbnb served over 300,000 travelers in 2016. Airbnb competes with traditional accommodations such as hotels, motels, bed and breakfast, and lodges.

8.

Airbnb offers thousands of accommodations in Oregon.

9.

Airbnb members who wish to rent accommodations through Airbnb's platform, and hosts who wish to offer accommodations for rent, must first become members by registering and creating an account with Airbnb.

10.

Airbnb's policies require prospective guests (members who wish to access accommodations) to maintain a member profile. Airbnb requires each member profile to include, among other things, a photo of the member's face and the member's full name. Airbnb's policies provide, among other things, that guests are expected to upload a photo to their profile that shows the guest's face.

11.

Airbnb explains that requiring guests to include a photo of their face allows other people, including hosts, to learn more about the guest before the guest books an accommodation. Airbnb further explains that a photo allows a host to feel that a guest is reliable, authentic, and committed to the spirit of Airbnb.

12.

Providing hosts with information that reveals immutable characteristics about guests (such as photographs of guests' faces and full names) prior to booking does not provide Airbnb

or its hosts with any meaningful information from which another person, including a host, can “learn more” about the prospective guest. For example, a photo will not reveal whether the guest has an ability to pay, whether the guest has had prior successful visits to other Airbnb properties, or whether the guest poses a threat to the safety of the host or property.

13.

Providing hosts with information that reveals immutable characteristics about guests (such as photographs of guests’ faces and full names) prior to booking does not provide Airbnb or its hosts any meaningful information from which another person, including a host, can learn whether the prospective guest is reliable, authentic, or committed to the spirit of Airbnb.

14.

To rent an accommodation to guests, hosts post listings on Airbnb’s platform. Listings generally contain information about the available accommodation, such as location, capacity, size, features, availability, and pricing.

15.

A host who posts a listing for an accommodation can, through a setting available on the Airbnb platform, opt to receive booking requests only from prospective guests whose profiles include certain specified information. For example, Airbnb allows hosts to opt to receive booking requests only from prospective guests whose profile includes a photograph, and, in that situation, a prospective guest whose profile does not include a photograph would not be allowed access to that host’s accommodation. In other words, in compliance with Airbnb’s booking policies, hosts may refuse to make their accommodations accessible to any prospective guest whose profile does not include certain information, such as a photograph or full name.

16.

Airbnb’s booking policies also allow hosts to deny a booking request from a prospective guest whose profile *includes* a photograph and full name. Prospective guests search for accommodations on Airbnb’s platform through search criteria, such as city, state, or country;

number of bedrooms; or a zip code. Listings that are available for the dates requested by the prospective guest are then displayed for the prospective guest who can, if allowed by the host's settings, request to book the accommodation. Airbnb offers listings worldwide to prospective guests, like Plaintiffs, who reside in Oregon.

17.

Unlike hotel websites or websites of hotel room aggregators (such as, for example, Expedia.com and Travelocity.com), however, Airbnb does not allow a prospective guest to immediately book an accommodation that is available on the dates requested by the guest, unless the host has opted into the "instant booking" feature. If the host has not opted into the "instant booking" feature, any prospective guest seeking to book an accommodation must first "request a booking," then be approved by the host. The booking request is then forwarded to the host, who reviews the request along with the prospective guest's profile information, which includes the prospective guest's full name and profile photo. The host may then either pre-approve, confirm, or reject the request within a defined time. If the host does not respond to the booking request at all, the request expires and the prospective guest is not permitted to book the request.

18.

A host offering an accommodation on Airbnb's booking platform has the ability to deny requests from prospective guests for any reason, including "on account of race, color," and other grounds protected by ORS 659A.403.

19.

Hosts regularly take advantage of Airbnb's booking policies to deny accommodations to prospective guests based on protected characteristics such as race and/or color.

20.

In particular, discriminatory hosts deny access to accommodations—offered through Airbnb's platform—to African-Americans. Indeed, a recent study found that prospective guests with distinctively African-American names are roughly 16% less likely to be confirmed for

bookings than identical prospective guests with distinctively non-African-American names; meaning, Airbnb's platform offers accommodations that are not accessible at all by African-Americans because of their race.

21.

Airbnb has long been aware that hosts on its platform discriminate against African-Americans, and that its policies allow that discrimination to occur. Airbnb acknowledges that its hosts discriminate against certain of its members and that discrimination occurs on its platform, noting that "there have been too many unacceptable instances of people being discriminated against on the Airbnb platform because of who they are or what they look like." In this lawsuit, Airbnb has acknowledged the existence of discrimination on its platform.

22.

Airbnb's public accommodation—its service of offering to the public, among other things, lodgings—discriminates and violates ORS 659A.403, because Airbnb offers a different service to African-Americans than it does to whites. Under Airbnb's booking policies, Plaintiffs and other African-Americans in Oregon do not have access to the full and equal accommodation of Airbnb's offerings. Instead, one set of accommodations is available to white guests, while a separate, lesser set of accommodations is available to African-American guests.

23.

Airbnb's booking policies require guests to maintain a profile that includes a photograph, allow hosts to review and consider information (such as photographs and names) about guests that necessarily reveal immutable protected characteristics as part of the booking decision, and allow hosts to make booking decisions based on those immutable protected characteristics.

24.

Airbnb has long had affirmative knowledge that African-Americans are discriminated against on the Airbnb platform. With that knowledge, Airbnb has generally modified its Terms of Service and other policies in different ways, including prior to and after the filing of this

lawsuit. Although Airbnb has modified its Terms of Services and other policies in some ways, and although Airbnb has knowledge that African-Americans are discriminated against on the platform, Airbnb has recommitted to those policies that discriminate against African-Americans and still requires guests to disclose immutable characteristics prior to booking and allows hosts to use that information in the booking decision. By recommitting to those policies and refusing to change them, Airbnb has, time and again, intentionally denied African-Americans equal access to Airbnb's accommodations.

25.

Airbnb is directly liable for discrimination on its platform because it has maintained and repeatedly recommitted to policies that directly act to deny persons within Oregon—and, specifically, African-Americans—the full and equal accommodations, advantages, facilities, and privileges of a place of public accommodation.

26.

Airbnb also aids and abets its hosts in unlawful discrimination by establishing and maintaining booking policies that allow its member hosts to discriminate based on protected characteristics, by refusing to change those policies, and by continuing to maintain such policies even while it concedes that they are discriminatory.

27.

Plaintiffs are not members of Airbnb and have never been members of Airbnb.

28.

Plaintiffs wish to become members of Airbnb and to take advantage of the full and equal accommodations, advantages, facilities, and privileges of Airbnb, and without any distinction, discrimination, or restriction on account of Plaintiffs' race or color.

29.

Plaintiffs and all class members have a legally recognized interest in accessing public accommodations, such as Airbnb, that do not discriminate in violation of Oregon law.

30.

Plaintiff Patricia Harrington, through counsel, requested that Airbnb allow her to become a member of Airbnb so that she and others similarly situated, including Plaintiffs Ebony Price and Carlotta Franklin, may access the public accommodations offered by Airbnb. However, Plaintiff Patricia Harrington, on her own behalf and on behalf of others similarly situated, including Plaintiffs Ebony Price and Carlotta Franklin, demanded that Airbnb cease implementation of its policies that discriminate against African-Americans and that allow hosts to discriminate against African-Americans.

31.

In her letter demanding that Airbnb change its discriminatory policies, Plaintiff Harrington highlighted that Airbnb's current policies are discriminatory against African-Americans and that she made her demand as a black person and on behalf of others similarly situated. She also highlighted that she demanded the change to Airbnb's policies because she and "other black residents of Oregon are entitled to access public accommodations that are free of discrimination."

32.

Airbnb refused to allow Plaintiff Patricia Harrington and other African-Americans in Oregon, including Plaintiffs Ebony Price and Carlotta Franklin, to join under those terms. Instead, Airbnb again intentionally recommitted to its discriminatory policies, writing that if Plaintiff joined Airbnb and felt she had suffered discrimination, Airbnb would help her secure a different but similar listing. Thus, in its response letter, Airbnb confirmed that it intended to maintain a separate stock of accommodations that are not accessible to African-Americans, and recommitted to operating a platform that denies African-Americans equal access to public accommodations.



33.

Airbnb's decision to repeatedly recommit to its discriminatory policies generally, its decision to deny Plaintiffs' request to change its booking policies, and its decision to continue maintaining discriminatory policies that deny African-American Oregonians access to its platform on the same terms as white Oregonians in spite of Plaintiffs' request to the contrary, were decisions made on account of race: in order for Airbnb to effectuate a change in its policy and eliminate discrimination on its platform Airbnb would have to provide equal accommodations to African-Americans. Airbnb refuses to do so. By recommitting to its existing policies and rejecting Plaintiffs' request, Airbnb intentionally decided to provide access to one set of accommodations to prospective white customers while denying that same service to African-Americans.

34.

By doing so, Airbnb intentionally made a distinction, discriminated, and imposed a restriction on Plaintiffs and all members of the class on account of race and/or color.

35.

Airbnb's continuing discriminatory policies, and its refusal to allow Plaintiffs and members of the class to join free of those discriminatory policies, caused and continue to cause injury to and impact on the legally recognized interest to access public accommodations free of any discrimination and in compliance with Oregon law.

36.

That injury to and impact on Plaintiffs' legally recognized interest is real or probable in that Airbnb refuses to allow Plaintiffs and members of the class access to an accommodation that provides services and lodging free of any distinction, discrimination, or restriction based on race or color and, instead, provides an accommodation that discriminates.

37.

By granting the relief Plaintiffs and members of the class seek, this Court will rectify that injury to and impact on the legally recognized interest by allowing Plaintiffs and members of the class access to the public accommodations available through Airbnb's platform in a manner that complies with Oregon law and is free of any distinction, discrimination, or restriction on account of race and/or color.

### **CLASS ALLEGATIONS**

38.

Plaintiffs bring this action as representative parties pursuant to ORCP 32, and on behalf of a class initially defined as: All African-American residents of Oregon who are not currently, and have never been, members of Airbnb. Plaintiffs do not agree that jurisdiction in this Court is appropriate and believe that the action should be remanded to the Circuit Court for the State of Oregon for Multnomah County. To the extent this action is properly before this Court, Plaintiffs bring this action as representative parties pursuant to Fed. R. Civ. Proc. 23(b)(2).

39.

Common questions of fact and law exist and predominate over questions affecting individual members of the class. Common questions include:

- A. Whether Airbnb is a public accommodation under Oregon law;
- B. Whether Airbnb's recommitment to its discriminatory policies intentionally denied Plaintiffs and members of the class equal access to Airbnb's platform;
- C. Whether Airbnb's intention to deny Plaintiffs access to a discrimination-free platform and to maintain a discriminatory booking policy violates Oregon's public accommodations statute;
- D. Whether Airbnb's intention to deny Plaintiffs access to a discrimination-free platform and maintain a discriminatory booking policy discriminates based on race and/or color;

E. Whether Airbnb's refusal to allow Plaintiffs and members of the class to join Airbnb free of discriminatory policies and its decision to maintain a platform that discriminates has caused an injury and impact on the legally recognized interest to access public accommodations free of discrimination; and

F. Whether Airbnb's intention to deny Plaintiffs access to a discrimination-free platform and to maintain a discriminatory results in unequal treatment to African-Americans, who do not receive the full and equal accommodation of Airbnb's offerings.

40.

Plaintiffs' claims are typical of the claims of all members of the class in that:

A. All claims involve identical conduct because Airbnb's policies would apply to all prospective members in the same manner;

B. Airbnb refuses to allow Plaintiffs and members of the class to join free of its discriminatory policy because its policies apply uniformly to all prospective members; and

C. Plaintiffs' claims are based on the same legal theory that all members of the class will advance in this action.

41.

Plaintiffs will fairly and adequately protect and represent the interests of the class in that:

A. Their claims are typical of the claims of all class members;

B. Plaintiffs' counsel is qualified to represent Plaintiffs and members of the class and will vigorously prosecute the litigation; and

C. Plaintiffs' interests are not in conflict with the interests of members of the class and those interests are aligned.

42.

A class action is superior to other methods available for adjudication of this action in that:

A. Common questions of law and fact predominate over factors affecting individuals;

B. Upon information and belief, no other class action that purports to represent Oregon residents wishing to access Airbnb's public accommodation free of discrimination that violates Oregon law has been commenced;

C. Individual members of the class will have little to no interest in controlling the litigation due to the high costs of individual actions and because the claim seeks injunctive relief only and, for that reason, the action is a "mandatory" class and the relief sought will prevent further harm to Plaintiffs and members of the class; and

D. This Court is experienced in managing class action litigation and is a desirable forum because Airbnb conducts significant business in this county and in Oregon.

**CLAIM FOR RELIEF**  
**(ORS 659A.403 AND 659A.885(7))**

43.

Plaintiffs restate and incorporates the allegations above as if stated herein.

44.

Under Oregon law, Plaintiffs and members of the class are entitled to the full and equal accommodations, advantages, facilities, and privileges of any place of public accommodation, without any distinction, discrimination, or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status, or age.

45.

Airbnb offers a different service to African-Americans than it does to whites. Despite modifying its Terms of Service and other policies in many ways, Airbnb has repeatedly and intentionally recommitted to those discriminatory policies that require guests to disclose immutable characteristics to hosts, and that allow hosts to make booking decisions based on those immutable characteristics. Further, Plaintiffs demanded that Airbnb change its policies so that they and other African-American Oregonians would have access to the accommodations offered on the platform, free of discrimination. Airbnb refused Plaintiffs' demand and informed

Plaintiffs that it would maintain its discriminatory policies. Airbnb's recommitment to its discriminatory policies was intended to deny African-Americans full and equal accommodations to the accommodations offered on Airbnb's platform.

46.

In recommitting to its discriminatory policies, Airbnb makes distinctions, discriminates, and imposes restrictions on Plaintiffs and members of the class on account of race or color by denying them membership free of discrimination.

47.

In refusing Plaintiff's demand to change its discriminatory policies, Airbnb makes distinctions, discriminates, and imposes restrictions on Plaintiffs and members of the class on account of race or color by denying them membership free of discrimination.

48.

By intentionally choosing to maintain policies despite knowing that they are discriminatory, Airbnb makes distinctions, discriminates, and imposes restrictions on Plaintiffs and members of the class on account of race or color by denying them membership free of discrimination.

49.

Further, Airbnb acknowledges that discrimination takes place on its platform and intentionally aids and abets that discrimination.

50.

Plaintiffs wish to join Airbnb and to access the public accommodations available through Airbnb's platform in a manner that complies with Oregon law and is free of discrimination. Members of the class are entitled to access public accommodations that comply with Oregon law and are free of discrimination.

51.

Pursuant to ORS 659A.885(7), Plaintiffs, on their own behalf and as a representative of the class defined above, seek an injunction requiring Airbnb to allow Plaintiffs and other African-American residents of Oregon to join as members and to access the full accommodations available on Airbnb's platform, without discrimination.

52.

Plaintiffs also seek an award of reasonable attorney fees, costs, and expert witness fees pursuant to ORS 659A.885(7). Plaintiffs reserve the right to amend this Complaint to seek compensatory and punitive damages and other available equitable relief.

### **JURY TRIAL DEMAND**

53.

Plaintiffs demand a jury trial as to all claims and issues for which that right is available, ORS 659A.885.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs seek judgment against defendant and the following relief:

- A. An order certifying the matter as a class action pursuant to ORCP 32 or Fed. R. Civ. Proc. 23(b)(2), naming Plaintiffs as the class representatives, and naming counsel as class counsel;
- B. On Plaintiffs' Claim for Relief, an injunction requiring Airbnb to allow Plaintiffs and other African-American members of the public to join as members and to access the full accommodations available on Airbnb's platform, without discrimination;
- C. An award of reasonable attorney fees, costs, and expert witness fees; and
- D. All other relief and the Court finds appropriate.

DATED this 27th day of April, 2018.

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